IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1272 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

INDIRABEN P DASANI

Versus

STATE OF GUJARAT & 2

Appearance:

1. Special Civil Application No. 1272 of 1994

MR HR PRAJAPATI for Petitioner No. 1

MR BD KARIA for Petitioner No. 1

MR PV HATHI for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 23/06/2004

ORAL JUDGEMENT

1. Smt. Indiraben P. Dasani, petitioner has filed this petition under Articles 226 and 227 of the

Constitution of India with a prayer that this Court may issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the order dated 12th February, 1976, at Annexure "G" as being illegal and bad. The petitioner further prayed that this Court may quash and set aside the order dated 18th November, 1980, passed by Director of Education and order dated 5th November, 1981, passed by District Primary Officer.

2. It may be noted that originally the District Panchayat passed a resolution dated 19th April, 1980, to take up petitioner in service. However, the Director of Primary Education by his order dated 18th November, 1980, pleased to reject the resolution and same has been followed by District Primary Officer by his order dated 5th November, 1981.

3. The facts giving rise to this petition are as under:-

3.1 The petitioner had passed SSC Examination without maths and science. The District Panchayat Officer by his order dated 27th August, 1973, appointed the petitioner as well as one Ranjanben Damodar as a teacher on ad-hoc basis upto 12th October, 1973.

3.2 From the record it appears that the petitioner has been relieved from service on 28th October, 1974, and from that day onwards she was not serving in the school. The order of appointment as well as order of relieving both are produced at Annexure "B" and "C" to the petition.

3.3 It appears from the record that in 1975 petitioner passed B.A.Examination and 1978 petitioner passed B.Ed. Examination. The District Primary Officer passed a resolution on 19th April, 1980, by which though petitioner was relieved as under trained teacher, it was directed that the case of the petitioner be examined and after obtaining approval of the selection committee the petitioner may be taken back in service.

3.4 It may be noted that pursuant to the aforesaid order the petitioner was not taken up in service. It may be noted that thereafter Director of Primary Education has passed the order on 18th November, 1980, and pleased to quash and set aside the resolution of District Primary Officer, Jamnagar, taking the petitioner in service which is produced at Annexure "E" to the petition. Thereafter the District Primary Officer also passed the order on 5th

November, 1981, in this behalf.

3.5 It may be noted that the District Education Officer has passed the resolution on 12th February, 1976, by which it has been stated that the untrained teachers who are in service, and during the interregnum period, if they obtained necessary qualification then that employee will be continued in service.

3.6 It may be noted that when the District Education Officer passed the resolution on 19th April, 1980, the petitioner immediately filed a petition being Special Civil Application No.2619 of 1980 before this Court on 26th September, 1980, that this Court may direct the respondents to implement the said resolution and the respondents be directed to treat the petitioner in service with effect from 1.6.80 with continuity of service and backwages.

4. When the aforesaid matter reached hearing before this Court, this Court (Coram: P.D.Desai, J. (as he was then) on 8th December, 1980, passed the following order:

> "In view of the speaking order made by the Director of Primary Education pursuant to the entertainment of the representation of the petitioner consequent upon the order of this Court and for the detailed reasons given in the said order of the Director of Primary Education, there is no substance in this petition and it is summarily rejected."

5. The order of the learned Single Judge has been produced by the District Primary Officer along with the affidavit filed by him.

6. It may be noted that the District Primary Officer has also pointed out that against the said order, Smt.Indiraben P.Dasani filed Letters Patent Appeal before this Court being LPA No.58 of 1981 and this Court (Coram: B.J.Diwan, C.J. & B.K.Mehta, J.) on 11.3.1984 pleased to dismiss the said Letters Patent Appeal and confirmed the order of learned Single Judge.

7. It may be noted that when the aforesaid matter was placed before this Court on 29th January, 1994 and this Court (Coram: S.M.Soni, J.) pleased to pass the following order:

> "Rule. To be heard with Spl.C.A. No.2728/83, as it is stated that identical question is involved

in that petition."

8. I have heard Mr.B.D.Karia, learned advocate for the petitioner, Ms.Rita Chandarana, learned AGP for the respondents No.1 and 2 and Mr.P.V.Hathi, learned counsel with Mr.Dhirendra Mehta, learned advocate for the respondent No.3.

9. Mr.B.D.Karia, learned advocate for the petitioner has tried to assail the order of the authorities on various grounds.

10. Mr.Dhirendra K.Mehta, learned advocate for the respondent No.3 has stated that in this case the petitioner has challenged the order of 8.11.1980 and 5.11.1981 and the present petition has been filed by the petitioner somewhere in January 1994 and, therefore, the present petition is liable to be dismissed on the ground of delay and latches.

11. Over and above it may be noted that against the original order learned advocate for the respondent No.3 has pointed out that the petitioner has also filed Special Civil Application No.2619 of 1980 in which they have originally prayed that the resolution passed by the Panchayat dated 19th April, 1980, be implemented. In that matter before this Court the order dated 18.11.80 and 5.11.81 was also pointed out in this behalf. As indicated above, this Court has dismissed the petition on 8th December, 1980.

12. It may be noted that against the said order, as I indicated above, Letters Patent Appeal was filed and the same has been dismissed by this Court. In view of the same, the order of this Court in SCA No.2619 of 1980 as well as in LPA No.58 of 1981, the present petition may also be not entertained in this behalf.

13. Learned advocate for the respondent No.3 further submitted that when the matter was filed before this Court, the petitioner has misrepresented before this Court that there is identical matter is pending before this Court being SCA No.2728 of 1983 and, therefore, this Court was led to be believed that there is an identical matter and, therefore, this Court issued rule in this behalf.

13.1 Learned advocate for the respondent No.3 has further stated that aforesaid SCA No.2728/83 is quite different from the present petition and he has invited my attention to the judgment of this Court in that SCA

No.2728 of 1983 decided by this Court (Coram: M.R.Calla, J.) on 24.7.95. The said judgment and order of this Court has been reported in 1996(1) GLR 64 in the case of Arunaben Jayantilal Min Vs. State of Gujarat and others. In that very case the learned Judge in para 6(6) has observed that facts of the case of the petitioner i.e. case of Arunaben are entirely different than those of Mrs.Indira P.Dasani and the order in the case of Mrs.Indira P.Dasani has been passed by the Director and certain observations were made against the petitioner in that order without notice or opportunity to the petitioner and, therefore, the order, passed on the basis of such observations made at her back, can not be sustained.

13.2 Learned advocate for the respondent No.3 has submitted that this very judgment as stated that facts of that case are different from the facts of present case. It may be noted that petitioner was continued in service in that case while in this case the petitioner was relieved from service.

14. I have considered the facts and circumstances of the case. I have also considered the orders passed by the authorities, the order passed by this Court (Coram: P.D.Desai, J.) dated 8th December, 1980, in SCA No.2619 of 1980 as well as order of this Court in LPA No.58 of 1981 decided by this Court (Coram: B.J.Diwan, C.J. & B.K.Mehta, J.) on 11.3.1984 where the Division Bench has observed that the Division Bench is not inclined to interfere with the reasonings and conclusion of the learned Single Judge. I have called for the original file of Special Civil Application No.2619 of 1980 where I have perused the original file as well as the order of LPA No.58 if 1981. However, from the record, it appear that there is no review application as stated by the learned advocate for the respondent.

15. It may be noted that the matter of Indiraben P.Dasani is also quite different and, therefore, also petitioner cannot be able to get advantage of the order of this Court in that matter. In view of the same, there is no substance in the contention raised by the petitioner. In view of the same, the petition is, therefore, rejected on merits of the matter. As I dismissed the petition on merits of the matter, I have not considered the contention of the learned advocate for the respondent that the petition is barred by delay and latches. In view of the same, the petition is rejected. Rule is discharged with no order as to costs.

(K.M. Mehta, J.)

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